**THIS SAMPLE MASTER SERVICES AGREEMENT IS INTENDED AS A TEMPLATE OR EXAMPLE. IT IS PROVIDED AS-IS FOR YOUR USE, BUT UPLEVEL SYSTEMS MAKES NO REPRESENTATIONS AS TO ITS LEGAL VALIDITY, AND DISCLAIMS ALL RESPONSIBILITY FOR THE CONSEQUENCE OF USING THIS AGREEMENT WITHOUT PRIOR REVIEW BY LEGAL COUNSEL. USE AT YOUR OWN RISK!**

**ALL STATES HAVE DIFFERENT LAWS GOVERNING CONTRACTS AND AGREEMENTS. THIS SAMPLE AGREEMENT HAS NOT BEEN REVIEWED BY LEGAL COUNSEL COMPETENT IN THE LAWS OF YOUR STATE TO ENSURE THAT IT CONFORMS TO THE REQUIREMENTS OF THE STATE IN WHICH YOU ARE DOING BUSINESS. YOU ARE ADVISED TO REVIEW THIS MASTER SERVICES AGREEMENT WITH SUITABLE LEGAL COUNSEL PRIOR TO USE.**

**SAMPLE MASTER SERVICES AGREEMENT**

**THIS MASTER SERVICES AGREEMENT** ("MSA") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date") by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("MSP"), with a primary address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Client"), with a primary place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. MSP and Client may hereinafter be collectively referred to as the "Parties". This MSA, together with any other Exhibits or Schedules attached hereto, or by reference, constitutes the "Agreement" between the Parties.

1. SERVICES

Client hereby engages MSP to provide Information Technology support, including, without limitation: consulting; software installation and maintenance; product sourcing, installation and maintenance; and other services (the "Services") as may be detailed in Exhibits, Schedules, proposals, project plans, or Statements of Work attached hereto. MSP shall provide consulting personnel ("Consultants") to provide the Services, and shall be solely responsible for the selection and management of Consultants. Consultants may be employed by MSP directly, or may be associates or agents selected by MSP, or members of MSP's Partner Network. Services shall be provided only for Information Technology equipment covered under this Agreement, as listed in Exhibits and Schedules hereto.

MSP may further provide additional equipment and services relating to Information Technology (the "Additional Services"), as set forth in Exhibits and Schedules herein. Additional Services may include, without limitation: subscription-based hardware and software services; networking devices and services; security devices and services; Wide Area Networking (WAN) devices and services, and Voice over IP (VoIP) devices and services, as described in Exhibits and Schedules attached hereto. MSP may install software or hardware to provide the Additional Services at the Client's place of business or other physical locations.

Client may request changes that extend or add to the Services or Additional Services by written request to MSP. If MSP agrees to the requested changes in writing, that shall constitute an amendment to the Exhibits, Schedules, and/or Statement of Work attached hereto, including changes in fees, charges, and the term of this Agreement.

2. FEES & PAYMENT

Prices for the Services are set forth in the fee schedule attached herein. Prices for the Additional Services are set forth in the Schedules pertaining to these Additional Services. Client agrees to pay all fees and charges as specified on the Schedules. Client further agrees that MSP may increase pricing over and above the prices specified in the Schedules to accommodate tax or fee increases by Local, State or Federal agencies, as well as to accommodate price increases by third parties and vendors providing some or all of the Services and Additional Services. MSP may further collect sales taxes from Client if required by law to do so, unless MSP receives a properly executed and valid exemption certificate from Client.

MSP will invoice Client monthly for fees and charges pertaining to the Services and Additional Services if any. Invoices may be delivered electronically or by other means mutually acceptable between MSP and Client. Client agrees to pay MSP within fifteen (15) days of date of invoice. Overdue invoices shall be subject to an interest charge of \_\_\_\_% for each invoice and for each month (or pro-rated part of a month) that the payment is overdue.

3. TERM AND EARLY TERMINATION

This Agreement shall remain in force for a period of \_\_\_\_\_\_ months from the Effective Date, and shall be reviewed annually to address any necessary adjustments or modifications. This Agreement shall automatically renew for a period of \_\_\_\_\_\_ months after the expiration of the current term, beginning on the day immediately following the end of the current term, unless either party gives the other ninety (90) days prior written notice of the intent to not renew this Agreement. MSP may, at its discretion, charge Client termination fees if Client terminates any Services, Additional Services, or this entire Agreement without cause, prior to the expiry of the current term. Termination fees shall equal, in addition to all amounts already payable and due by Client, one hundred percent (100%) of the remaining monthly fees that would have been payable by Client, if the terminated Services or Additional Services had been provided until the end of the Agreement term.

This Agreement may also be terminated by the Client upon thirty (30) days written notice if MSP fails to fulfil in any material respect its obligations under this Agreement, or breaches any material term or condition of this Agreement, and does not cure such failure or breach within thirty (30) days of written notice of the failure or breach by Client.

If either party terminates this Agreement, MSP shall assist Client in the orderly termination of Services and Additional Services, including timely transfer of the Services to another designated provider; and Client shall agree to pay MSP the actual costs of rendering such assistance.

Client understands that the provision of the Additional Services by MSP may require MSP to enter into subscription agreements (the "Subscriptions") with third parties and vendors, and early termination of these Subscriptions may result in charges incurred by MSP. Client agrees to reimburse MSP for any and all early termination fees and subscription termination charges incurred by MSP, in the event that this Agreement is terminated prior to the expiry of these Subscriptions.

Client further understands that the Additional Services provided by MSP may require the installation, at Client's place of business or other physical location, of Information Technology equipment (the "Equipment"), as set forth in attached Schedules. Client acknowledges that the Equipment is the property of the MSP, or of third parties or vendors providing the Additional Services on behalf of the MSP; and Client agrees to return the Equipment to MSP in good condition upon termination of this Agreement under any circumstances. If the Equipment is not returned to MSP in good condition, MSP shall invoice Client, and Client shall agree to pay, for the value of the Equipment, as may be determined at the sole discretion of MSP or by third parties or vendors providing the Equipment to MSP.

Client further understands that provision of the Services or Additional Services under this Agreement may require the installation of software programs or tools on computers or devices that are owned by Client. Client agrees that in the event this agreement is terminated, MSP shall be permitted to remove these software programs or tools from these computers or devices; provided that MSP shall take reasonable care not to damage or impair the functioning of these computers or devices while removing the software or tools.

4. COVERAGE, SERVICE LEVELS AND ACCESS

MSP shall provide Client and Client's employees with on-site assistance during the hours of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to be charged according to the fee schedule attached herein. MSP shall also provide Client and Client's employees with remote assistance and monitoring services during the hours of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, according to the fees laid out in said fee schedule. MSP shall respond to Client's assistance requests under the provisions of the relevant Exhibits or Attachments, and with best efforts after hours or on holidays.

MSP may, from time to time, perform scheduled maintenance, updates, or adjustments to Client Information Technology devices, as well as equipment providing the Additional Services. Client understands that performance of such duties may result in downtime of the Information Technology infrastructure. MSP shall use best efforts to provide Client with at least forty eight (48) hours notice of such downtime, and shall coordinate with Client, when possible, to perform such duties so as to reduce the impact upon Client's business operations. MSP shall not, however, be responsible for any delays, deficiencies, or impairment of Client's Information Technology that are caused by Client's actions or omissions.

To the extent that the Services or Additional Services are performed on, or located on, Client's place of business or other physical locations (the "Premises"), Client hereby grants to MSP the right of ingress to the Premises, and further grants MSP the right to provide the Services and Additional Services at the Premises, or install and maintain the Equipment at the Premises. Client shall provide MSP with any keys, codes or other facilities that may be required in order to access the Premises. MSP shall not be liable for any adverse impact to Client or Client's business due to Client's denial or non-facilitation of access to Premises, provided that such access was reasonably required for performance of the Services or Additional Services by MSP.

5. MISCELLANEOUS

MSP and its agents shall not use or disclose Client’s information, except as necessary for or consistent with the provision of the Services and/or the Additional Services, and will exercise reasonable care to protect Client's information against unauthorized use. MSP acknowledges that it has no rights in any software, hardware, systems, documentation, guidelines, procedures, and similar related materials or processes, or any modifications thereof, provided by Client, except with respect to MSP’s use of the same in providing the Services or Additional Services during the term of this Agreement. Client shall, at Client’s sole cost, take whatever action is necessary for MSP to be provided with nonexclusive rights and/or licenses to use software provided by Client for use by MSP in providing the Services or Additional Services.

Client shall defend, at its own expense, and indemnify and hold harmless MSP, MSP’s agents, and MSP’s directors, officers, licensors, suppliers, subcontractors and employees, from and against any claim based on: a violation by Client of this Agreement, or any Federal, State, or Local law or regulation; an allegation that information provided to MSP by Client violates applicable law or infringes a patent, trademark, copyright, or other intellectual property right; the Services or Additional Services provided by MSP, including any claims based on warranty, contract, tort, strict liability, patent, equity, copyright infringement, or misappropriation of intellectual property. MSP will reasonably notify Client of any such claim or demand that is subject to Client’s indemnification obligation.

Any claim arising under or relating to this Agreement shall be governed and interpreted by the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Parties hereby consent to exclusive jurisdiction and venue in the courts of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for any and all disputes and litigation arising under or relating to this Agreement. In the event of any dispute or arbitration hereunder, the prevailing party shall be entitled to recover its costs and disbursements incurred, together with reasonable attorneys' fees to be fixed by the arbitrator or court at trial or on appeal.

Client represents and warrants that it is an entity validly existing and in good standing under the laws applicable to it, and that it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement. Client further represents and warrants that performance of this Agreement will not violate any law or breach any other agreement. MSP will perform the Services and Additional Services set forth in this Agreement on the basis of information and instructions furnished by Client, shall be entitled to rely upon any such information or instructions provided by Client, and shall not be liable for any damages or delays arising from incorrect information or instructions supplied by Client.

MSP PROVIDES THE SERVICES AND ADDITIONAL SERVICES "AS IS" AND "AS AVAILABLE" TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. MSP MAKES NO (AND SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES OR ADDITIONAL SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

Notwithstanding any provision contained in this Agreement, neither of the Parties shall be liable to the other to the extent fulfillment or performance of any terms or provisions of this Agreement are delayed or prevented by: revolution or other civil disorders; wars; acts of enemies; strikes; labor disputes; electrical equipment or availability failure; fires; floods; acts of God; federal, state or municipal action; statute; ordinance or regulation; or, without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence it is unable to prevent. This clause shall not apply to the payment of any sums due under this Agreement by either of the Parties to the other.

MSP reserves the right, to temporarily suspend or terminate Client’s access to the Services or Additional Services at any time, without incurring liability of any kind, should MSP determine, in its sole discretion, that the use of the Services or Additional Services may cause MSP to have legal liability or disrupt others' use of the Services or Additional Services. Client must not use the Services or Additional Services to harm others, nor permit such use or harm by anyone accessing the Services or Additional Services on Client’s behalf, nor use the Services or Additional Services to store illegal content or information.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, and undertakings, whether written or oral, between the Parties with respect to such matter. This Agreement may be amended only by an instrument in writing referencing this Agreement and executed by the Parties or their permitted assignees; notwithstanding, that the Services and/or Additional Services may be extended or modified by written agreement as described above.

The Parties intend to create an independent contractor relationship, and neither shall have any power or authority to bind the other. Nothing contained in this Agreement shall be construed to make either Client or MSP joint ventures, principals, partners, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor retained by MSP to perform work on Client’s behalf under this Agreement shall be deemed to be an employee, agent, or contractor of Client.

Except as otherwise specified in this Agreement, all notices, requests, approvals, consents, and other communications required or permitted under this Agreement shall be in writing, and shall be deemed given on the day actually received by the Party to whom the notice is addressed.

No delay or omission by either of the Parties to exercise any right or power it has under this Agreement shall impair, or be construed as a waiver of, such right or power. A waiver by any Party of any breach or covenant of this Agreement shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

If any provision of this Agreement is held, for any reason, by a court of competent jurisdiction, to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect, and the provision found to be contrary to law shall be deemed modified to the most limited extent required in order to cause such provision to be in accordance with applicable law, while most fully carrying out the intent of the applicable provision as set forth herein.

Any Section of this Agreement shall survive to the extent required for the performance of such provision in accordance with the terms hereof.

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original document, but all such counterparts together shall constitute one binding agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be signed by their duly authorized representatives as of the date set forth below.

Accepted by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Authorized Signature of MSP Representative)

MSP:

Date:

Accepted by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Authorized Signature of Client Representative)

Client:

Date:

**EXHIBIT 1: SERVICES AND FEE SCHEDULE**

**EXHIBIT 2: ADDITIONAL SERVICES AND FEE SCHEDULE**

**EXHIBIT 3: STATEMENT OF WORK**